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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 2645 of 2003**

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Date of Judgment: 20th December, 2016

AJYODHA PRASAD

..... Petitioner

Through Mr. Navin Sharma, Advocate with
Ms. Divya Garg, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Jitendra Kumar Singh, Standing
Counsel for Railways.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S. SISTANI, J. (ORAL)

1. Rule DB was issued in this matter on 13.02.2007.
2. Present writ petition has been filed by the petitioner challenging the order dated 28.11.2002 passed by the Central Administrative Tribunal (hereinafter the '*Tribunal*').
3. The necessary facts to be noticed for disposal of this writ petition are that the petitioner was employed as Casual Labourer (Khalasi) on 27.06.1977 and was granted a temporary status after screening on 30.08.1985. During the course of his employment, he suffered an injury to one eye. During screening for regularization, the petitioner was declared medically unfit and discharged from service on 31.01.1989.

4. Finding the order of discharge to be illegal, harsh and improper, the petitioner made a representation to the respondents. Based on his representation, another medical examination was conducted in which he was found fit. Accordingly, the petitioner was re-engaged on 08.05.1995. However, intervening period was not treated spent on duty. Aggrieved, the petitioner had approached the Tribunal by filing OA 2234/2001 seeking proper fixation of seniority and pay along with back wages for the period between 01.02.1989 and 08.05.1995. By means of the impugned order dated 28.11.2002, the Tribunal has allowed the OA to the extent of granting seniority and proper fixation of pay, but denied back wages, or arrears of pay and allowances, as the petitioner had not worked for the period. This has led to the filing of the present writ petition.
5. The sum and substance of the arguments of the learned counsel for the petitioner is that Tribunal has failed to appreciate that the services of the petitioner were disengaged for no fault of the petitioner, which is evident from the fact that after the second medical examination he was found fit. It is submitted that Tribunal has incorrectly denied the benefit of pay during the intervening period. It was also contended that admittedly the petitioner had suffered injury in his eye during the course of his employment and rather taking a sympathetic view in the matter, he was disengaged. Counsel contends that after the second medical examination, the petitioner was found fit. Accordingly, the petitioner cannot be penalized on account of the inaction on the part of the respondents.
6. This petition is opposed by the learned counsel for the respondent on

the ground that the petitioner is not entitled for back wages for the period as he did not perform his duties. He further submits that merely because a sympathetic view was taken in the matter, the petitioner would not be entitled to back wages for the period. Counsel also contended that it has been repeatedly held that there is no standard uniform procedure to be adopted by the courts for grant of back wages. He submits that in respect of back wages, the court must examine each case on its merits and in the facts of the present case, the petitioner would not be entitled to back wages as he did not perform any duties during the said period and after he was declared medically fit, no post was available to re-engage the petitioner for some time.

7. We have heard the learned counsel for the parties and considered the rival submissions.
8. The short point which arises for consideration before this court is whether the petitioner is entitled to back wages for the period he was disengaged and did not carry out any work. The second question, which arises is that in case the petitioner is entitled to back wages, would he be entitled to full back wages or part thereof.
9. The consistent view of the Supreme Court has been that the payment of back wages is not a natural consequence of reinstatement, but it is the discretionary power at the hand of the court, which is to be exercised by the court after considering the facts and circumstances of the case. In the case of ***Hindustan Tin Works v. Employees***, (1979) 2 SCC 80, wherein it was held that:

“11. In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant

considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the Rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular (see Susannah Sharp v. Wakefield [(1891) AC 173, 179]).”

10. In ***P.G.I. of Medical Education & Research v. Raj Kumar***, (2001) 2 SCC 54, it was held as under:

“9. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in Syed Yakoob v. K.S. Radhakrishnan [AIR 1964 SC 477 : (1964) 5 SCR 64].

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12. Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straight-jacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety. As regards the decision of this Court in Hindustan Tin Works (P) Ltd. [(1979) 2 SCC 80 : 1979 SCC (L&S) 53 : (1979) 1 SCR 563] be it noted that though broad guidelines, as regards payment of back wages, have been laid down by this Court but having regard to the peculiar facts of the matter, this Court directed payment of 75% back wages only.”

(Emphasis Supplied)

11. At the same time, there is no precise formula for ascertaining back wages as the same depends upon the facts and circumstances of the case. In *U.P. State Brassware Corporation Ltd. v. Udai Narain Pandey*, JT 2005(10) SC 344, the Supreme Court held that:

“No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act.”

(Emphasis Supplied)

12. On examining the facts of the present case, we find that the petitioner had suffered an injury in his eye during the course of employment and at this stage he had acquired a temporary status. Pursuant to screening, he was not found fit and his services were not regularized and he was disengaged. His representation was considered favourably. He was put to a second medical examination and declared fit. Thus, it can safely be said that the petitioner was not allowed to work for no fault of his.

However, to balance the equities, we grant 50% back wages to the petitioner. In case the arrears are paid within two months from the date of receipt of this order, no interest would be paid to the petitioner however beyond the period of two months, the petitioner would be entitled to interest of 6% per annum.

13. The petition and all applications are disposed of.

G. S. SISTANI, J.

VINOD GOEL, J.

DECEMBER 20, 2016
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